No. 45764-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JOB M. EDWARDS

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

APPELLANT'S REPLY BRIEF

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A. ARGUMENT

1. The evidence was insufficient to prove all four crimes.

a. Facts unfavorable to the State must be considered.

In its recitation of the facts and in its arguments on the sufficiency of the evidence, the State ignores facts that are unfavorable to its case. For example, the State ignores Colton's testimony that Job did not demand that he do anything. RP 131. While the State is entitled to all favorable inferences in a challenge to the sufficiency of the evidence, appellate courts are not required to ignore unfavorable facts. State v. Davis, __ Wn.2d __, 340 P.3d 820, 827-28 (2014) (Stephens, J. dissenting).[1] In evaluating the sufficiency of the evidence, this Court should consider the facts which are unfavorable to the State.

b. Job was not an accomplice to his brother's threat to the remaining robber in their home.

Immediately following the failed robbery by DJ and Colton, Michael threatened to kill Colton. This was done in the living room upstairs. RP 99, 174-75. As Colton himself recalled, Job was not present; he was downstairs. RP 133. Michael also made his threat before Colton

[1] This portion of Justice Stephens's dissent received four concurring votes, making it precedent. Davis, 340 P.3d at 826 (Wiggins, J. concurring in part, dissenting in part) (concurring with dissent in that evidence was insufficient to sustain firearm possession convictions).

showed he was unarmed. RP 99. Colton further testified that Job did not threaten to kill him. RP 133. Still, Job was convicted of felony harassment.

The State agrees that Job himself did not threaten to kill Colton. See Br. of Resp't at 8. The State contends Job acted as an accomplice to his brother's threat. Br. of Resp't 8.

To be guilty as an accomplice, the accomplice must have **actual knowledge** that the principal was engaging in **the crime** eventually charged. State v. Allen, __ Wn.2d __, 341 P.3d 268, 273 (2015). Contrary to the State's assertion, it is not sufficient for an accomplice to have general knowledge of **a crime**. Br. of Resp't at 7. Here, there is no evidence that Job knew his brother was going to threaten Colton. The robbery, after all, was a surprise to Job and Michael. Moreover, Job was not upstairs with Michael. RP 99, 131, 133, 324. Accordingly, the evidence did not show that Job assisted his brother in the threat. See State v. J-R Distributors, Inc., 82 Wn.2d 584, 593, 512 P.2d 1049 (1973) (a person is not an accomplice "unless, in some way, he associates himself with the undertaking, participates in it as in something he desires to bring about, and seeks by his action to make it succeed.").

While arguing that the crime happened when Michael threatened to kill Colton, the State nevertheless argues that Michael's threat to kill was a

course of conduct that continued through Colton's detention and that Job was complicit in it. Br. of Resp't at 8-9. The State cites no authority in support of its position. Br. of Resp't at 8-9. The State did not argue below that the later pointing of guns at Colton was part of the felony harassment or that there were other acts of felony harassment. During closing argument, the State argued that the act of felony harassment was Michael's threat. RP 513-14.

Here, the purported criminal act was completed once the threat was uttered. There was no way for Job, who was not with his brother upstairs, to have assisted Michael. See State v. Robinson, 73 Wn. App. 851, 857, 872 P.2d 43 (1994) (because robbery of pedestrian outside car was completed, driver of car could not have aided and abetted the robbery). That Job was armed (he had just shot an armed robber in his home) does not show that Job was complicit. He was merely present in the same house. This was insufficient. In re Welfare of Wilson, 91 Wn.2d 487, 491-92, 588 P.2d 1161 (1979); Robinson, 73 Wn. App. at 857.

Moreover, the State failed to prove that Michael's threat was unlawful. See State v. Bland, 128 Wn. App. 511, 517, 116 P.3d 428 (2005) ("necessary force may include putting a trespasser in fear of physical harm."); State v. Smith, 111 Wn.2d 1, 9, 759 P.2d 372 (1988) (threats to injure may lawfully be made in self-defense). Michael's threat

was made in his own home, shortly after Michael had been held at gunpoint by DJ, who was Colton's confederate. The housemates did not know what Colton would do or if there were other unknown confederates outside nearby. Colton testified that he appeared to be involved in the robbery. RP 130. The threat was also made before Colton claimed ignorance and showed he was unarmed. RP 99. Under these circumstances, Michael's threat was lawful to neutralize the potential danger posed by Colton. Thus, even if "Colton was not attempting to continue the robbery" at the time of the threat, this does make the threat unlawful. Br. of Resp't at 9. What matters is what appeared reasonably necessary to Michael at the time. Without sufficient proof that Michael's threat was unlawful, Job cannot be guilty as an accomplice to it.

Finally, the State does not contest that, under the jury instructions and the law of the case doctrine, the jury was required to find "[t]hat the words or conduct of **the defendant** placed Colton Geeson in reasonable fear that **the threat** would be carried out." CP 708 (emphasis added). The State argues that Job placed Colton in reasonable fear that the threat would carried out by standing armed downstairs when the threat is made. Br. of Resp't at 9. But the evidence did prove that Colton was even aware of Job at that point. The State further argues that Job's later pointing his gun at Colton while Michael moved DJ's body downstairs placed Colton in fear

that the threat would be carried out. Again, the act of felony harassment was over. Job's later act of protecting himself from Colton was unconnected to Michael's earlier threat. Moreover, Colton did not testify that he feared Job would carry out Michael's threat. Colton testified that Job did not threaten to kill him. RP 133.

In sum, the evidence did not prove that Job was complicit in Michael's threat, that Michael's threat was unlawful, or that Job placed Colton in reasonable fear that Michael's threat would be carried out. For these reasons, this Court should reverse the felony harassment conviction for insufficient evidence.

c. Job and his brother used reasonable, lawful force to temporarily detain a robber in their home.

To prove unlawful imprisonment, the State had to prove that the Colton was restrained "without legal authority." RCW 9A.40.010; CP 702. The State was also required to prove that the restraint was not a lawful offer to use force against Colton, a trespasser who appeared complicit in the robbery. RCW 9A.16.020(4); CP 703.

Colton, a trespasser who posed a danger, was only briefly detained. RP 103, 327.[2] Colton and DJ had just tried to rob Michael and Krystal at

[2] A police report analyzing phone records, not admitted a trial, indicates that the entire incident was about 5 minutes. CP 400.

gunpoint in their home. Though Colton denied involvement, he admitted that he appeared complicit. RP 130. Detaining Colton to investigate his involvement and offering to use force for protective purposes was reasonable. See Bland, 128 Wn. App. at 516-17; Smith, 111 Wn.2d at 9.

The State emphasizes the scintilla of evidence that Job told Colton he could not leave. During his custodial interrogation, Job said that he told Colton he could not leave or "something along those line." RP 328-29.[3] But securing Colton was justified. Colton appeared involved in the robbery. The Edwards also did not know what Colton would do. Until Colton showed Michael, it was unclear whether Colton was armed. The Edwards also did not know if another confederate was nearby outside or whether there were weapons in the car Colton had arrived in. To protect themselves and to investigate Colton's involvement, the Edwards were justified in temporarily detaining Colton.

The State argues that the Edwards restrained Colton not out of self-defense, but as a means of getting rid of DJ. Br. of Resp't at 10. Colton, however, testified that he was going to take DJ with him. RP 103. Colton did not testify that Job, Michael, or Krystal demanded that he take DJ. See RP 103, 131, 133.

[3] See CP 629-30 (transcript of the interrogation).

The Edwards kept the possibility of force in play to protect themselves from Colton and any unknown confederates. Shortly after Colton drove into the garage and parked, Colton changed his mind about taking DJ and left. The Edwards did not stop him or pursue him. The State failed to meet its burden proving the absence of self-defense or that the restraint was unlawful.

d. Job was not an accomplice to his housemates' attempted drug sale on October 25, 2012.

To prove Job guilty of possession with intent to deliver a controlled substance, the State had to prove that, on or about October 25, 2012, Job or an accomplice possessed oxycodone and that Job or an accomplice intended to deliver this oxycodone. CP 691 ("to-convict" instruction). The State's theory of the case was that Job was guilty as an accomplice to his housemates' intended sale of oxycodone on October 25, 2012. RP 510.

There was no evidence that Job was involved in his housemates' intended delivery to DJ and Colton on October 25, 2012. Br. of App. at 23. Job was merely present, downstairs, in his own home. This was inadequate to prove he was an accomplice. See Wilson, 91 Wn.2d at 491-92; Robinson, 73 Wn. App. at 857-58. The State does not contest this argument. Br. of Resp't at 11-12. Because the evidence did not show that

Job assisted in his housemates' intended delivery on October 25, 2012, the conviction should be reversed.

The State inaccurately recounts the testimony at trial. Br. of Resp't at 11. Krystal testified that while Job sometimes sold his medication, in 2012 he only sold his medication to his brother, Michael. RP 156-58. Only Michael and Krystal sold medication to other people. RP 158-59. This is important because Job was not charged with intending to deliver oxycodone to his brother. He was charged and convicted for the October 25, 2012 incident.

At trial, the State contended that Job supplied the oxycodone pills that Krystal and Michael tried to sell to DJ and Colton. RP 518. Based on this alone, the State contended that Job was guilty as an accomplice. RP 518. The evidence, however, did not establish that the pills were supplied by Job. The State agrees that Michael and Krystal also had prescriptions for oxycodone. Br. of Resp't at 11. Krystal also obtained oxycodone on the black market. RP 160. The evidence did not tie the pills to Job.

That 30 pills of Percocet were later found in a bottle bearing Job's name does not establish that the pills originated from Job. Krystal testified that Michael controlled this bottle and that it was the current bottle that she and Michael used to store pills. RP 157, 184. Regardless, it does not follow that Job was involved in the intended drug sale on

October 25, 2012. If A (Job) delivers to B (Michael) drugs, and B or C (Krystal) later forms intent to deliver these drugs to D (Colton or DJ), it does not follow that A was complicit in the later intended delivery.

Because the State failed to prove Job was complicit in his housemates' intended delivery of oxycodone on October 25, 2012, the conviction should be reversed for insufficient evidence.

e. The evidence did not prove that Job allowed another person to use a space under his control for illicit drug purposes.

To prove Job guilty of unlawful use of a building for drug purposes, the State was required to prove that he provided a space under his control to another person for the purpose of storing, manufacturing, selling, or delivering drugs. RCW 69.53.010; CP 694. Because the evidence failed to prove that Job provided a space under his control to another person for illicit drug purposes, this Court should reverse the conviction. State v. Davis, 176 Wn. App. 385, 395-96, 308 P.3d 807 (2013) (reversing conviction because evidence did not prove that defendant allowed another to deal drugs from a space that defendant maintained control over).

The State contends this offense is very broad. See Br. of Resp't at 12-13. The State argues Job is guilty because he, along with Michael, was renting the house and he knew that Krystal sold drugs. Br. of Resp't at 13.

The State argues that it is immaterial that Job lived downstairs and did not control the upstairs area where Michael and Krystal lived. Br. of Resp't at 13. The State also emphasizes that Job had access to a shared kitchen upstairs. Br. of Resp't at 13.

The State's broad reading criminalizes the mere act of knowingly having a housemate who sells drugs. For example, under the State's theory, a college student sharing a house (as members of fraternities and sororities often do) would be guilty of unlawful use of a building for drug purposes if he or she was aware that another tenant or guest is storing, manufacturing, selling, or delivering drugs elsewhere in the house. Thankfully, this offense requires evidence that the defendant allowed another person to deal drugs from a space of which the defendant controlled. Davis, 176 Wn. App. at 395-96.

Here, that requirement was not met. There was no evidence that Job allowed Krystal or Michael to sell drugs downstairs, the area of which he had control over. Further, that Job had communal use of the kitchen upstairs does not establish that he was in control of that area. As in Davis, this Court should reverse the conviction.

2. If not reversed for insufficient evidence, the convictions should be reversed for other errors and the case remanded for a new trial.

a. The court erred in refusing to give the standard self-defense instruction, relieving the State of its burden of proof.

"[U]nder certain circumstances necessary force may include putting a trespasser in fear of physical harm." Bland, 128 Wn. App. at 517. When there is some evidence of self-defense, the defendant is entitled to the pertinent self-defense instruction. State v. Walden, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997).

Viewing the evidence, Colton was a trespasser and, if not actually complicit in DJ's armed robbery, appeared complicit. To protect themselves from this malicious trespasser and other possible confederates, Michael and Job offered to use force to protect themselves and their property. This evidence entitled Job to the standard self-defense instruction under WPIC 17.02, which tells the jury that a person may lawfully offer to use reasonable force to protect persons or property and to prevent malicious trespasses. The court erroneously reasoned that only the specialized self-defense instruction under WPIC 17.03 applied. RP 479-81, 490, 500.

The trial court's refusal to give a self-defense instruction based upon a ruling of law is reviewed de novo. State v. Walker, 136 Wn.2d

767, 772, 966 P.2d 883 (1998). The State wrongly argues that the court's decision was based on factual reasons and that the abuse of discretion standard applies. Br. of Resp't at 17, 19. The court was not making a factual determination, such as whether Job subjectively believed the offer to use force was necessary. Rather, the court was making a legal determination: that WPIC 17.02 could not be applied in scenarios where WPIC 17.03 applied. This was a legal judgment. Regardless, even if the abuse of discretion standard applied, a ruling based on an erroneous legal interpretation is necessarily an abuse of discretion. Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

The problem with the trial court's ruling is that WPIC 17.02 and 17.03 are not mutually exclusive. Residents may lawfully detain a trespasser in their home to determine what the trespasser's purpose is. A person may also lawfully use force in his or her home to protect persons or property from a trespasser. Here, WPIC 17.02 was plainly applicable. Job did not know what Colton's true intentions were. He did not know if Colton had confederates nearby outside. When Colton was driving the car he had arrived in into the garage, Job did not know if Colton had a weapon hidden in the car or if he would use the vehicle to assault him. The jury could have reasonably found that Job's offer to use force was reasonable.

A hypothetical illustrates another flaw in the court's ruling. If the incident had taken place outside, WPIC 17.03 would have been inapplicable because it only applies to detentions in buildings or on real property. RCW 9A.16.020(4). It also requires that the person lawfully possess the building or real property. RCW 9A.16.020(4). Thus, this defense would be unavailable to those detaining a robber outside on the streets or in a park. It would also not apply to guests inside buildings, such as those staying at a hotel, because they are not owners of the building. These people, however, would certainly be entitled to the standard self-defense instruction under WPIC 17.02.

In this case, the lawfully in possession of a building requirement was met and the incident happened inside. Nevertheless, WPIC 17.03 was not an adequate substitute for WPIC 17.02. The self-defense instruction given, premised on WPIC 17.03 and RCW 9A.16.020(4), had a "manner and duration" requirement. It required that the manner and duration of Colton's detention was reasonable to investigate the reason for Colton's presence on the premises. CP 703. It did not allow Job to argue to the jury that the Edwards were simply protecting themselves from Colton, a trespasser who appeared complicit in an armed robbery in their home. Thompson, cited by the State, is dissimilar. There, the court refused to give a no duty to retreat instruction. State v. Thompson, 47 Wn. App. 1, 5,

733 P.2d 584 (1987). The defendant was still able to argue his theory of the case because the question of whether the defendant should have retreated was not an issue raised by either party. Thompson, 47 Wn. App. at 5. In contrast, Job was not able to argue his theory of the case.

The refusal to instruct the jury under WPIC 17.02 was erroneous and unconstitutionally relieved the State of its burden on the offense of unlawful imprisonment. See Walden, 131 Wn.2d 469, 473; State v. Acosta, 101 Wn.2d 612, 618, 683 P.2d 1069 (1984). The State does not argue harmless error. The unlawful imprisonment conviction should be reversed.

b. Failing to apply ER 404(b), the court erroneously admitted propensity evidence that Job was involved in previous drug transactions.

Under ER 404(b), "[e]vidence of a defendant's prior bad acts is not admissible to show the defendant has a propensity to commit crimes but may be admissible for some other proper purpose." State v. Gunderson, 181 Wn.2d 916, 921, 337 P.3d 1090 (2014). To admit such evidence, the trial court must, on the record, (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect. Gunderson, 181 Wn.2d at

923. If the evidence is admitted, the court must provide a limiting instruction. Gunderson, 181 Wn.2d at 923.

Before trial, the State admitted that it intended to offer evidence that Job was involved in previous unlawful drug transactions to show that he was an accomplice to his housemates' intended drug transaction on October 25, 2012. RP 71, 73. Overruling Job's objection that ER 404(b) applied to this evidence, the court ruled that ER 404(b) did not apply and did not engage in an ER 404(b) analysis or provide a limiting instruction. RP 74-75. At trial, the State elicited testimony from Krystal that Job was in "business" with her and Michael, that Job had previously sold drugs to his friends and to Michael, that Job earned an income over the years by selling drugs, and that he paid his portion of the rent by selling drugs. RP 149, 156, 158, 161. This was plainly prior bad acts evidence requiring an ER 404(b) analysis.

The State appears to argue that this propensity evidence was admissible because there was a "continuing course of conduct." Br. of Resp't 19. The State ignores that Job was charged for possession with intent to deliver on October 25, 2012. Moreover, the two cases cited by the State in support of its argument, State v. Love, 80 Wn. App. 357, 908 P.2d 395 (1996) and State v. Gooden, 51 Wn. App. 615, 754 P.2d 1000 (1988), do not involve ER 404(b). Br. of Resp't at 19. They involved the

issue of whether the jury was unanimous as to the criminal act. Love, 80 Wn. App. at 360-61; Gooden, 51 Wn. App. 617-18. Job is arguing that inadmissible propensity evidence was put before the jury, not that there was a lack of unanimity.

The State's alternative argument that the evidence would have been admitted under ER 404(b) should be rejected. Br. of Resp't at 202. The court did not make a preliminary finding that the alleged bad acts occurred. RP 74-75. It also did not provide a limiting instruction. RP 74-75. This shows the court did not engage in an ER 404(b) analysis. The application of ER 404(b) is to be done at trial, not for the first time on appeal.

While the trial court stated the probative value of the evidence outweighed the prejudicial effect, the court's cursory analysis failed to carefully consider the potential for unfair prejudice. See Gunderson, 181 Wn.2d at 925 (due to the risk of unfair prejudice in admitting prior acts of domestic violence evidence, "courts must be careful and methodical in weighing the probative value against the prejudicial effect"); State v. Wade, 98 Wn. App. 328, 336, 989 P.2d 576 (1999) (improper to admit two prior drug dealing acts for purpose of showing intent on current drug charge because it invited the jury to make a propensity inference). Under

Wade and Gunderson, the court's supposed balancing was manifestly unreasonable.

The State does not contest Job's argument that the error was prejudicial. Br. of Resp't at 21. Moreover, the record shows that the State invited the jury to consider Job's past actions during closing argument. See RP 546 ("[Defense counsel] says what happened before October 25th doesn't count. It doesn't matter. Don't look at it. **I want you to look at it. I want you to look at it real hard because it does count and it does matter.**") (emphasis added). This court should reverse the convictions.

c. The knife, gas-mask, and bullet-resistant vest were irrelevant and prejudicial.

The knife, gas-mask, and bullet-resistant vest found in the Edwards' home were not relevant to the charges and should not have been admitted. ER 401, 402. The State merely recounts the trial court's ruling on the issue. The State does not explain how these items were relevant. Br. of Resp't at 22.

The State argues that any error was harmless. Br. of Resp't at 22. The State, however, does not contest Job's argument that the prosecutor used this inadmissible evidence to support its improper argument that Job was "living in an armed camp" and was prepared to combat law-enforcement. RP 520-21. The prosecutor specifically referred to the

bullet-proof vest and gas-mask to support its improper argument. RP 520. The irrelevant evidence was used to portray Job as a dangerous menace. This Court should reverse the convictions.

d. The prosecutor's egregious misconduct during closing argument deprived Job of his right to a fair trial.

In reviewing unpreserved claims of prosecutorial misconduct, "the failure to object will not prevent a reviewing court from protecting a defendant's constitutional right to a fair trial." State v. Walker, __ Wn.2d __, 341 P.3d 976, 984 (2015). When misconduct creates incurable prejudice, the result is effectively a mistrial, and there is no need to object. Walker, 341 P.3d 984.

The prosecutor committed flagrant and ill-intentioned misconduct by (1) comparing the case to "Pulp Fiction," a popular fictional movie depicting graphic violence and drug use; (2) arguing that Job's home was an armed camp and that Job was prepared to combat law enforcement; and (3) arguing that Job's shooting of DJ, an armed robber in Job's home, was not necessarily justified and that Job's motive in shooting DJ was not protection of himself and his housemates. The killing of DJ was not an issue in the case, Job's possession of firearms and other items were lawful, and the prosecutor's personal opinion that the case was like a notoriously violent film had no place in a criminal trial. These improper arguments

were plainly designed to paint Job as dangerous and to appeal to the passions and prejudices of the jury.

The State analyzes these improper arguments in isolation. Br. of Resp't at 26-29. In analyzing the prejudicial effect of these improper arguments, they must be analyzed cumulatively, not in isolation. Allen, 341 P.3d at 274 ("Repetitive misconduct can have a 'cumulative effect.'") (quoting In re Personal Restraint of Glasmann, 175 Wn.2d 696, 707, 286 P.3d 673 (2012)). Here, the pervasive misconduct demonstrates incurable prejudice.

Contrary to the State's argument, the prosecutor raised the issue of DJ's death during closing argument. RP 521. Thus, it was proper for Job's defense counsel to remind the jury that Job was not charged with wrongfully killing DJ and that the jury could infer that Job had lawfully acted in self-defense. RP 535. The prosecutor then argued DJ's death was not necessarily justified, that Job had done "something drastic," and that Job had really acted to protect his "drug organization." RP 549-50.

The State argues that any prosecutorial misconduct had little or no effect and proceeds to recount the evidence admitted in the case. Br. of Resp't at 29-30. This analysis misses the mark. "The focus must be on the misconduct and its impact, not on the evidence that was properly admitted." Glasmann, 175 Wn.2d at 711. Here, there is a substantial

likelihood that the pervasive misconduct affected the jury's verdicts, depriving Job of a fair trial. This Court should reverse the convictions.

3. Alternatively, most of the firearm enhancements should be vacated for lack of sufficient evidence.

If the convictions are not reversed, this Court should vacate most of the firearm enhancements for insufficient evidence.

a. All three firearm enhancements on the possession with intent to deliver count should be vacated.

All three firearms enhancements on possession with intent to deliver count should be vacated for insufficient evidence. The handgun and rifle in Job's room downstairs was unconnected to Krystal's and Michael's intended delivery of oxycodone to Colton or DJ. See State v. Brown, 162 Wn.2d 422, 432, 173 P.3d 245 (2007) (defendant's mere proximity to rifle during burglary insufficient). As the State admitted, other than possibly supplying some pills in the past, Job was not involved this transaction. As for Michael's shotgun, this was in Michael's room, away from the living room area. Michael was only able to arm himself with this shotgun after DJ tried to forcibly take the pills. At that point, there was no intent to deliver oxycodone to DJ or Colton. The crime had ended. Thus, the shotgun that Michael was later able to retrieve was not readily available and was not adequately connected. See State v. Gurske, 155 Wn.2d 134, 143, 118 P.3d 333 (2005) (gun, found with drugs inside a

backpack in a car, not readily available to the driver of the car); State v. Valdobinos, 122 Wn.2d 270, 273-74, 281, 858 P.2d 199 (1993) (gun found under defendant's bed not readily available to defendant, who had earlier offered to sell cocaine to an undercover agent).

These facts make this case unlike State v. O'Neal, 159 Wn.2d 500, 505, 150 P.3d 1121 (2007) and State v. Simonson, 91 Wn. App. 874, 877, 960 P.2d 955 (1998). Those cases involved the manufacturing of methamphetamine in a mobile home and in trailers. O'Neal, 159 Wn.2d at 502; Simonson, 91 Wn. App. at 874. These were continuing offenses. O'Neal, 159 Wn.2d at 504; Simonson, 91 Wn. App. at 883. Here, the crime of intent to deliver a controlled substance, oxycodone, was not continuing. That offense occurred when Krystal and Michael agreed to sell pills to Colton and DJ on October 25, 2012. It ended when DJ tried to forcibly take the pills.

b. Two of the firearm enhancements on the harassment count should be vacated.

Only Michael's shotgun was connected to Michael's threat to kill Colton. DJ's gun, the Taurus, was not connected to this purported offense. Michael secured this gun later. See Brown, 162 Wn.2d at 432. Neither was Job's handgun connected to Michael's threat. This gun was in Job's possession. Job was not upstairs when Michael threatened Colton. He

was downstairs. The State cites no authority in support of its argument that these enhancements should be affirmed. Br. of Resp't at 16.

c. One of the firearm enhancements on the unlawful imprisonment count should be vacated.

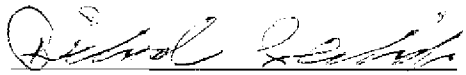
The evidence did not prove that DJ's gun, the Taurus, was connected to the unlawful imprisonment count. Michael merely secured this gun from DJ. RP 104-05. Colton did not testify that Michael used this gun to detain him. RP 105. The State failed to prove this gun was connected to the offense. See Brown, 162 Wn.2d at 432 (picking up gun found in residence during burglary insufficient to impose firearm enhancement). Again, the State does not cite authority in support of its argument that this enhancement should be affirmed. Br. of Resp't at 16. Neither does it challenge the analogy to Brown.

B. CONCLUSION

All four convictions should be reversed for insufficient evidence and the charges dismissed with prejudice. If not, the convictions should be reversed for legal errors and the case remanded for a new trial. Regardless, most of the firearm enhancements should be vacated.

DATED this 9th day of March, 2014.

Respectfully submitted,



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 45764-4-II
v.	)	
	)	
JOB EDWARDS,	)	
	)	
Appellant.	)	

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